U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 10768082

Date: APR. 14, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an anesthesiologist, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will summarily dismiss the appeal.

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose

services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2]

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

In the decision denying the petition, the Director observed that, in a prior request for evidence (RFE):

> The [P]etitioner was informed the [initial] evidence did not establish the proposed endeavor had national importance. The [P]etitioner was further informed the evidence did not establish he was well positioned to advance the proposed endeavor. Lastly, the [P]etitioner was informed the evidence did not establish that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

After summarizing the evidence the Petitioner submitted in response to the RFE, the Director noted that certain documents "do not carry any weight" because they "occurred after the filing of the petition," citing *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm.1971). The Director further concluded that "[w]hile the [P]etitioner may have contributed to his field during the course of completing his education/training, the evidence does not necessarily establish that his contributions are of such value they are more important than protecting the domestic labor supply." The Director did not otherwise indicate that either the initial evidence or the evidence submitted in response to the RFE, much of which "do not carry any weight," established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong. *See Dhanasar*, 26 I&N Dec. at 889. The Director

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).
[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

further analyzed the record and concluded that it also did not satisfy either the second or third *Dhanasar* prongs. *See id.* at 889-90.

On appeal, the Petitioner indicated that "[m]y brief and/or additional evidence is attached." However, the Petitioner did not submit a brief or a statement regarding the basis for the appeal, as required in Part 3 of the Form I-290B. *See* 8 C.F.R. § 103.3(a)(1)(v); *see also* 8 C.F.R. § 103.2(a)(1) (incorporating each U.S. Citizenship and Immigration Services' form instructions into the regulations requiring its submission). Instead, the Petitioner submitted six exhibits of documents, most of which were already in the record, prefaced by a one-page exhibit title page for each document, respectively. The exhibits the Petitioner submitted on appeal are as follows:

- The denial notice;
- A new letter "again explaining why [the Petitioner] is not required to have a full NY [medical license] at this time but he is eligible to apply for one";
- A copy of a letter initially submitted with the petition, which the Petitioner asserts addresses "[w]hether the [P]etitioner is well positioned to advance the proposed endeavor";
- Four pages of Google Scholar information, which the Petitioner again asserts addresses "[w]hether the [P]etitioner is well positioned to advance the proposed endeavor";
- A 19-page list that the Petitioner describes on appeal only as "Exhibit E" and "[o]riginally submitted list of [e]vidence"; and
- A 30-page document that the Petitioner describes on appeal only as "Exhibit F" and "Response to RFE."

The Petitioner did not state on appeal how the Director erred in concluding that the record did not establish either: (1) that the proposed endeavor has national importance or (2) that, on balance, it would be beneficial for the United States to waive the requirements of a job offer and thus of a labor certification.[3] Instead, the Petitioner addressed the second *Dhanasar* prong, particularly in the title pages for the third and fourth exhibits listed above, and the issue of whether the Petitioner must have had a license to practice medicine at the time of filing, particularly in the second exhibit listed above. Because the Petitioner did not address the Director's conclusions regarding either the first or third *Dhanasar* prong, both of which are dispositive, we summarily dismiss the appeal. *See* 8 C.F.R. § 103.3(a)(1)(v). The scope of a motion on this decision will be limited to the issue of whether we erred in concluding that the Petitioner did not address on appeal the Director's conclusions regarding either the first or third *Dhanasar* prong.

**ORDER:** The appeal is summarily dismissed.

[3] Furthermore, the extent of Exhibit E and Exhibit F's discussion of the proposed endeavor's national importance is: "[the Petitioner's] desire to serve the medical community is proven not only through his patient management but his dedication to clinical research, teaching medical students and also improve Hospital [*sic*] procedure. These all establish the national importance of his proposed endeavor: to be a clinical/researcher in the United States." That statement—which does not address how the Director erred in the denial notice—does not elaborate on how the Petitioner's patient management and dedication to research, teaching, and process improvement rises to the level of national importance, as contemplated by *Dhanasar*. *See Dhanasar*, 26 I&N Dec. at 889.